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EUROPEAN INTEGRATION THROUGH THE JURISPRUDENCE OF THE EUROPEAN UNION

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Abstract: This paper is based on an in-depth analysis of the jurisprudence concerning article 2 TEU. Above all it seeks the judicial application and the possibility of applying the judgment to control the respect of the values contained in the EU Member States. The doctrine is often different from the jurisprudential control since it moves in various directions. The lack of progress and the disparity between various values has become the object of a rigorous control remaining, therefore, an object difficult to get out. Art. 2 TEU is a tool of safeguard for the constitutional identity of the Union as well as the road towards European integration.

Keywords: European Union law; Art. 2 TEU; art. 17 TEU; art. 19 TEU; European values; justiciability; systemic violations; infringement procedure; preliminary ruling procedure; principle of non-regression.

INTRODUCTION

Every policy and sector of the European Union that follows a process of European integration is based on different articles of the Treaty of Lisbon. As regards values and primary law, one immediately notices Art. 2 TEU. Such an article has introduced a list of fundamental values for the Union. These values are common for the EU Member States as well as for each state that shares them.[1]

[1]Opinion 2/13. Opinion pursuant to Article 218(11) TFEU. Opinion pursuant to Article 218(11) TFEU-Draft international agreement-Accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms-Compatibility of the draft agreement with the EU and FEU Treaties of 18 December 2014, ECLI:EU:C:2014:2454, published in electronic Reports of cases, parr. 183ss. 10 December 2018, C-621/18, Wightman, ECLI:EU:C:2018:999, published in the electronic Reports of cases, par. 63. 19 March 2019, C-163/17, Jawo,

Art. 2 TEU it considers the expression of constitutional identity (Larsen, 2021). Values as extracted in the national constitutional structures are incorporated within the system of the Union, which presents the states that respect the legal order of the Union (Schroeder, 2016; Liakopoulos, 2019; Spieker, 2020; Fines, 2021).

Art. 2 TEU establishes that the Union is founded on values concerning respect for human dignity, freedom, democracy, equality, the rule of law and in a general way respect for human rights including the rights of minority persons. In the second sentence are defined the common values for the states, as an expression of a model of European society that characterizes pluralism, non-discrimination, tolerance, solidarity, justice and equality between women and men. In a general way it speaks of values as well as concepts that are included in its second part (Coghlan, 2022).[2]

The literature, in this regard, seems extensive and shares the opinion that the second sentence of Art. 2 TEU is

ECLI:EU:C:2019:218, published in electronic Reports of cases, par. 80.

[2]CJEU, 16 February 2022, C-156/21, Hungary v. Parliament and Council, ECLI:EU:C:2022:97, published in the electronic Reports of cases, par. 157.

limited to values expressing a series of ethical canons that characterize European society(Priollaud, Siritzky, 2008; Schroeder, 2016).[3] Especially, the first phase of Art. 2 TEU contains the values of the Union. The values refer to a series of provisions of the Union Treaty. Art. 3, letter a) TEU highlights the purpose of the Union after the promotion of peace. It is a value that, according to Art. 13 TEU, is related to the promotion of European institutions (Dougehtry, 2023).

From an internal point of view, values are called to determine the way in which the Union pursues its objectives, the competences and the institutions that exercise them (Hillion, 2016).

Values are relevant in the Union's relations with the rest of the world. In this regard, Art. 3, par. 5 TEU establishes that the Union affirms and promotes the values it establishes with the rest of the world. A provision that should be read together with Art. 21, par. 2, letter a) TEU, which is based on the policies and actions that are implemented by the

[3]See the conclusions of the Advocate General Y. Bot presented in joined cases on 26 July 2017, C-643/15 and C-647/15, Slovakia v. Council, ECLI:EU:C:2017:618 published in the electronic Reports of cases, par. 19.

Union in the areas of international relations aimed at safeguarding these values.[4]

According to art. 8 TEU, the privileged relations that the Union has with countries outside the Union are noted within the framework of a neighbourhood policy. This policy is based on the values of the Union. Art. 49 TEU defines respect for these values.

Also, according to Art. 2 TEU, respect for values is a necessary condition for candidate countries that want to become members of the Union.

Art. 7 TEU establishes the mechanisms of political control for the respect of these values by the Member States. This article implements and depends on discretionary assessments within the European Council and the Council. Art. 7 TEU decides on the relevant sanctions and limits concerning the powers of the Member States of the Union.

It is added and established according to protocol no. 24 the derogation of the principle that all the Member States of the Union are considered with reciprocal way to the

[4]Regulation (EU) No 235/2014 of the European Parliament and of the Council of 11 March 2014 establishing a financing instrument for democracy and human rights worldwide, OJ L 77, 15.3.2014, pp. 85-94.

countries of origin that are safe for legal and practical purposes, connected with inherent way to asylum, to the state that decides and takes into consideration the asylum application presented by a citizen of another Member State, as the object of the mechanism provided by Art. 7 TEU.

Another legal effect that is connected with Art. 7 TEU has been added by the secondary law that regulates the European arrest warrant. The Recital n. 10 of the Decision 2002/584/GAI provides for the implementation of a surrender warrant that can be suspended if it goes against a state requesting a finding for the violation of values, according to Art. 7, par. 2 TEU (Baratta, 2018; Dougehtry, 2023). The two mechanisms are regulated from Art. 7 TEU follow, however, different approaches considered independently of each other.

The sanction mechanism requires that the Council finds violations of the Union's values by a Member State. The related procedure requires that the Council deliberates by a majority of four fifths of its members after a motivated proposal by a third of the states, the European Parliament and the Commission and after prior approval by the

European Parliament when the proposal does not come from the same. This finding does not entail consequences except the possibility that it addresses to the state recommendations that result in the form of naming and shaming (Platon, 2022).

A second sanctioning mechanism is activated in the case of serious violations of the values, according to Art. 2 TEU, which is divided into several distinct phases. The European Council, after a reasoned proposal from a third of the states and from the European Commission (Art. 89 of its internal regulation) can ask the European Commission and the states to submit a unanimous proposal that establishes the violation. After this, the Council, by qualified majority, decides on the suspension of the rights that derive from the application of the treaties, including the right to vote provided for in the Council (Blagoev, 2011; Peers, 2022).

We refer to Art. 7 TEU regarding the suspension of the vote and of the Council, as an example according to various other types of sanctions.

The possible sanctions are excluded from the expulsion of the state. Art. 7 TEU provides for sanctions that modify and/or revoke in a precise manner the state that continues

to be subject to obligations deriving from its own treaties.
This mechanism is hastily defined by the President of the European Commission, as a nuclear choice, that does not go beyond the isolation of the sanctioned state from the rest of the Union and in a certain period of time (Müller, 2015). It is finalized under a pressure that aligns values considered indispensable for the participation and integration process.
For the sanctioning mechanisms, the Treaties provide a power limited to judicial review, which is presented, through the annulment action, according to the former Art. 263 TFEU, subject to a series of limitations.
According to Art. 269 TFEU, the Court of Justice of the European Union (CJEU) is competent for the legitimacy of acts that are adopted by the European Council. The same applies to the Council, according to Art. 7 TEU, (Liakopoulos, 2019) only if it concerns compliance and procedural requirements and after request of the Member State that is the subject of the finding.
The terms are fast when the state presents its request within one month of the finding, i.e. two months prescribed by Art. 263 TFEU. After that the Court has about a month to run from the date of its request.

The CJE in its first judgment based on Art. 269 TFEU took into consideration the limitations and the general competence that recognizes the validity of acts and institutions according to the principle of effective judicial protection. This principle is based on Art. 263 TFEU and it was interpreted restrictively (Baumann, 2021; Platon, 2022). The CJEU has declared admissible a direct appeal requesting the annulment of a resolution of the European Parliament. It has invited the Council to note the relative existence of a clear risk for serious violation of values starting, in this way, the procedure of ex Art. 7, par. 1 TEU.[5] The CJEU even if it is based on Art. 269 TFEU does not explicitly include acts of the European Parliament among those that can be subjected to a review of their legitimacy. It, also, explicitly excludes resolutions as producing binding and contestable legal effects, according to Art. 263 TFEU.[6] The judges decided not to deprive Art. 269 of any useful

[5]CJEU, 3 June 2021, C-650/18, Hungary v. Parliament, ECLI:EU:C:2021:426, published in electronic Reports of cases.

[6]CJEU, 3 June 2021, C-650/18, Hungary v. Parliament, op. cit., par. 37-41. 9 July 2020, C-575/18, C-575/18 P, Czech Republic v. Commission, C-575/18 P, ECLI:EU:C:2021:530, published in the electronic Reports of cases.

effect. The limitation provided for in the appeal, which concerned procedural violations, also remained valid. It would, thus, be necessary to preserve the useful effect of establishing the deadline for filing the appeal as applicable and as provided for by Art. 263 TFEU.

The judges completely ignored the frame time of one month that is established according to Art. 269 TFEU. Relative judgments issued after a couple of years assuming that they implicitly applied the reasoning according to the relevant deadline for filing the appeal.

Reflecting on the values of the EU, through the jurisprudence of the CJEU and particularly through Art. 2 TEU, concerns the legal nature and their justiciability, which allow the CJEU to control and impose them on the Member States.

Through the values, the general principles of the Union are highlighted, which are elaborated by the CJEU, finding useful indications that reconstruct their content. The question of the legal nature of the values is part of the work of the CJEU and of the existing relationship with the national identity clause, which is provided by Art. 4, par. 2 TEU.

Justiciability is addressed through the judgments applied to Art. 2 TEU and Art. 19, par. 1, lett. 2 TEU to protect the rule of law (Liakopoulos, 2019). The jurisprudence is based on Art. 10, par. 1 TFEU, i.e. the protection of democracy. The judgments are, also, based on Art. 2 TEU and Art. 49 TEU to elaborate the principle of non-regression. The Court finds that the values have the possibility of asserting the direct actionability hitting in such a way the violations of values.

THE VALUES AS GENERAL PRINCIPLES OF LAW AND THEIR RECONSTRUCTION THROUGH THE CJEU

The values provided by Art. 2 TEU are based on the legal system of the Union. They are introduced into the jurisprudence in the form of general principles. These are elements that involve the national constitutional courts to create and establish a common constitutional space that is defined through a dynamic dialogue (Lenaerts, Guttièrrez-Fons, 2010) intended to favor the influence, or the cross-fertilization of the national and European legal system (Grousset, 2005).

The general principles, according to the legal system of the

Union, have also opened up to other legal systems (Neuvonen, Ziegler, 2022) that the Court[7] wanted to fill their inevitable gaps. This legal system was born in an original and incomplete way, intended to integrate the national legal systems and in some cases to replace them (Herdegen, 2010).

Within this context, the constitutional traditions of the EU Member States have played a fundamental role, i.e. within the common legal system that uses and gives the opportunity for abstraction and adaptation (Lenaerts, 2021) of principles that maintain the function and connection with national legal systems in an autonomous way and with principles consistent with the structure and the purposes of the EU.

The general principles of freedom, democracy and the protection of human rights are formalized in a primary law, according to Art. 6, par. 1 TEU (Constantinesco, 1993; Simon, 1995). The change of terms during the integration period has been compared with the values of the Union and the related jurisprudence based on Art. 2 TEU, thus

[7]C-7/56 and 7/57, Algera of 11 July 1957, ECLI:EU:C:1957:7, I-0001.8, par. 112.

reconstructing the content of the Union with a double premise.
In the primary law there are provisions that re-propose the values listed according to Art. 2 TEU in the form of principles and rights. It is recalled within this context the title II of the Union Treaty.
The democratic principles are part of the Charter of the Fundamental Rights of the Union. Provisions that lead to different objectives that according to Art. 2 TEU have formalized general principles elaborated by the CJEU.

(Follows): THE CONTENT OF FUNDAMENTAL RIGHTS

The values of the Union include in their context the fundamental rights (Hoffmeister, 2015) considered within the primordial core of fundamental values of the Union.
Their relative commitment has been established in 1969 through the Stauder judgment. In this case the CJEU has given its own definition as an integral part of the general legal principles that guarantee and specify their content.[8]
In the Internationale Handelsgesellschaft case it is stated

[8]CJEU, 12 November 1969, 29/69, Stauder, ECLI:EU:C:57, I-00419, par. 7.

that the rights are informed and comprised in the constitutional traditions of the EU Member States.[9] The same line of thought is recalled in 1973 through the Nold judgment.[10] In such a way, the European legal system has contributed to shape its own identity.

The CFREU, through Art. 6, par. 1 TEU, has conferred a rank of primary law. The CFREU has brought together the rights of the person recognized as fundamental to the order of the Union. They divided into six titles. They are dedicated to rights such as: freedom, solidarity, citizenship, justice, equality, dignity defining, in such a way, the framework of the values of the Union.

Already from 2022 the CJEU has stated that the provisions of the Charter have specified the values that respect human rights, human dignity, etc. as provided for by Art. 2 TEU.[11] For the CJEU the CFREU presents itself as a parameter that

[9]CJEU, C-43/75, Defrenne of 8 April 1976, ECLI:EU:C:1976:56, I-00455, par. 26.

[10]CJEU, C-4/73, Nold of 14 May 1974, ECLI:EU:C:1974:51, I-00491, par. 13. C-36/75, Rutili of 28 October 1975, ECLI:EU:C:1975:137, I-01219, par. 32. C-44/79, Hauer of 13 December 1979, ECLI:EU:C:1979:290, I-03727, par. 15.

[11]CJEU, 16 February 2022, C-156/21, Hungary v. Parliament and Council, op. cit., par. 157.

refers to the values of the Union.

(Follows): DIGNITY

Dignity is presented in the list of values. It is a pre-condition for the fundamental existence of all others (Costantinesco, 2014). Dignity is based on the integrity of human being. The moral and physical essence of a person is connected to his birth, death and to his values (Schachter, 1983).[12] It is an abstract concept that describes and interpreter values' content.

The CJEU has recalled dignity by referring to other rights such as the right of establishment and movement, qualifying and limiting its exercise in such a way.[13]

In 1996 judges defined dignity as a fundamental right ensuring its general respect by EU Member States.[14]The

[12]See the conlusions of the Advocate General Y. Bot presented in 10 March 2011, in case C-34/10, Olivier Brüstle, ECLI:EU:C:2011:138, I-09821, par. 96.

[13]C-9/74, Casagrande of 3 July 1974, ECLI:EU:C:1974:74, I-00773, par. 3. C-152/82, Forcheri of 13 July 1983, ECLI:EU:C:1983:205, I-02323, par. 12. 19 January 1988, 292/86, ECLI:EU:C:1988:15, I-00111 par. 22.

[14]C-13/94, P. and S. And Cornwall County Council of 30 April 1996, ECLI.EU:C:1996:170, I-02143. C-377/98, Netherlands v. Parliament and

contribution, reconstruction and content of dignity is based on the CFREU. As an autonomous and non-derogable subjective right, indeterminate that goes beyond the fundamental rights established by the CFREU (Duprè, 2021).
In the provisions it is articulated by two rights, i.e. the right to life (art. 2) and the integrity of the person (art. 3).
A series of prohibitions such as punishments, torture, inhuman, degrading treatments, slavery, forced labor are also noted.
An indicative list comprised such an indeterminate right that according to the circumstances takes on contents that are not conceivable in the drafting of the Union text (Jones, 2012).
The CFREU has referred to dignity in provisions that perform the task of qualifying the rights enshrined in the provisions of title I.[15]
Judges exclusively respect human dignity as enshrined in

Council of 9 October 2001, ECLI:EU:C:2001:523, I-07979, parr. 70-77. C-36/02, Omega of 14 October 2004, ECLI:EU:C:2004:614, I-09609, par. 34.

[15]CJEU, 3 July 2014, C-362/13, Fiamingo and others, ECLI:EU:C:2014:2044, published in the electronic Reports of the cases, par. 24.

art. 1.[16] Title I embraces rights and prohibitions, such as the prohibition of inhuman, degrading punishments and treatments,[17] the right to physical and mental integrity of the person.[18] Dignity, finally, is linked to rights that present and also include other rights from the CFREU, namely those that respect private and family life according to art. 7.[19]

[16]CJEU, 27 September 2012, C-179/11, Cimade and GISTI, ECLI:EU:C:2012:594, published in the electronic Reports of the cases, par. 56. 27 February 2014, C-79/13, Saciri and others, ECLI:EU:C:2014:103, published in the electronic Reports of the cases, par. 25.

[17]CJEU, joined cases C-404/15 and C-659/15, P. Aranyosi and R. Căldăraru of 5 April 2016, ECLI:EU:C:2016:198, published in the electronic Reports of the cases, par. 85. C-578/16, C.K. and others v. Republika Slovenija of 16 February 2017, ECLI:EU:C:2017:127, published in the electronic Reports of the cases. 22 November 2022, C-69/21, Staatssecretaris van Justie en Veiligheid, ECLI:EU:C:2022:913, published in the electronic Reports of the cases, par. 57.

[18]CJEU, 12 November 2019, C-233/18, Zubair Haqbin, ECLI:EU:C:2019:956, published in the electronic Reports of the cases, par. 46.

[19]CJEU, 2 December 2014, A. and A., joined cases C-148/13 to C- 150/13, ECLI:EU:C:2014:2406, published in the electronic Reports of the cases, par. 53. 25 January 2018, C-473/16, F. ECLI:EU:C:2018: 476, published in the electronic Reports of the cases, par. 35.

(Follows): EQUALITY

The principle of equality was first considered by the CJEU in 1977.[20] It is a general principle that imposes similar situations in a different way from those that are justified by the court.[21] It is not considered as a form of a precise prohibition, i.e. a discrimination based on sex and nationality.

It favors the achievement of objectives of the Union by introducing various principles into the legal system such as democracy, that requires national institutions and authorities to justify choices made with behaviors of an arbitrary nature.

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[20]CJEU, 22 February 2022, C-483/20, Commissaire général aux réfugiés, ECLI:EU:C:2022:103, published in the electronic Reports of the cases, par. 27. 19 March 2019, joined cases: C-297/17, C-318/17, C-319/17 and C-439/17, Ibrahim and others, ECLI:EU:C:2019:219, published in the electronic Reports of the cases, par. 83.

[21]CJEU, 19 October 1977, joined cases: 117/76 and 16/77, Ruckdeschel, ECLI:EU:C:1977:160, I-01753, par. 7. 19 October 1977, joined cases 124/76. and 20/77, Moulins Pont-à-Mousson v ONIC ECLI:EU:C:1977:161, I-01795, parr. 16-17. 8 October 1980, 810/79, Überschär, ECLI:EU:C:1980:228, I-002747, par. 16. 22 June 1972, 1/72, Frilli, ECLI:EU:C:1972:56, I-00457, par. 19.

The recognition of this general principle allows the CJEU to intervene in various situations that they consider as discriminatory and that do not fall within the law of the Union. In this way, it is recalled this general principle alongside the individual prohibitions of discrimination that are provided for by the same treaties and by secondary law.[22]

The CJEU has interpreted the articles[23] confirming the prohibitions established by Art. 21 CFREU as precise expressions of the general principle of equality[24] affirming

[22]CJEU, 8 October 1980, 810/79, Überschär, op. cit., par. 16. 26 June 2001, C-381/99, Brunnhofer, ECLI:EU:C:2001:358, I-04961. C-144/04, Mangold of 22 November 2005, ECLI:EU:C:2005:705, I-09981, par. 76.

[23]CJEU, 11 June 2020, C-634/18, Prokuratura Rejonowa v. Slupskus, ECLI:EU:C:2020:455, published in the electronic Reports of the cases, par. 43. 18 July 2013, C-234/12, Sky Italia, ECLI:EU:C:2013:496, published in the electronic Reports of the cases, par. 15. 26 September 2013, C-195/12, IBV & CIE, ECLI:EU:C:2013:598, published in the electronic Reports of the cases, par. 50.

[24]CJEU, C-356/12, Glatzel of 22 May 2014, ECLI:EU:C:2014:350, published in the electronic Reports of the cases, par. 43. C-190/16, Fries of 5 July 2017, ECLI:EU:C:2017:513, not published, par. 35ss. 29 October 2020, C-243/19, Veselibas ministrija, ECLI:EU:C:2020:872, published in the electronic Reports of the cases par. 35. 30 June 2016, C-205/15, Toma,

and specifying thus what is provided for by Art. 2 TEU.[25] Finally, the scope of the value of equality is specified by Articles 8, 10, 19, par. 1 and 153, par. 1, letter i) and 157, par. 1 TFEU.[26]

(Follows): FREEDOM

The principle of freedom has been interpreted by the CJEU as a right that is part of the family of fundamental freedoms and the free movement of goods, services, capital, people understood as European citizens living in an area of freedom, security and justice. The value of freedom provided for by Art. 2 TEU, understood in its political dimension, has a double value. One of a negative type and of non-interference on the part of public authorities and one within the sphere of autonomy of the individual as the right to personal self-determination.

In 2008, the CJEU referred to the principle of freedom

ECLI:EU:C:2016:499, published in the electronic Reports of the cases, par. 36.

[25]CJEU, CJEU, 3 June 2021, C-650/18, Hungary v. Parliament, op. cit., par. 157.

[26]CJEU, 16 February 2022, C-156/21, Hungary v. Parliament and Council, op. cit., par. 158.

established by Art. 6, par. 1 TEU recognizing it as a fundamental principle of a European legal system.[27] The CJEU recalled the precise freedoms affirming the nature of the general principles such as the right to exercise, the right to property, the choice of profession, the freedom of enterprise,[28] the freedom of expression[29] and of association.[30]

The right of freedom is defined by the CFREU and then it was inserted into the legal system of the Union. In Title II the right to freedom and security are precisely established. The recognition of the legal value of the CFREU for the CJEU has frequently called for the relevant jurisprudence[31] and

[27]CJEU, C-415/05 P, Kadi & Al Barakaat Int'l Foundation v. Council of 8 November 2008, ECLI:EU:C:2008:461, I-6351.

[28]CJEU, 8 October 1986, C-234/85, Keller, ECLI:EU:C:1986:377, I-02897. 27 September 1979, 230/78, ECLI:EU:C:1978:216, I-02749, par. 20.

[29] C-260/89, ERT of 18 June 1991, ECLI:EU:C:1991:254, I-02925, par. 43. 28 October 1992, C-219/91, Ter Voort, ECLI:EU:C:1992:414, I-05485, par. 35.

[30]CJEU, C-415/93, Bosman of 15 December 1995, ECLI:EU:C:1995:463, I-04921, par. 79.

[31]CJEU, 15 February 2016, C-601/15, JN, ECLI:EU:C:2016:84, published in the electronic Reports of the cases, parr. 43-47. 15 March 2017, C-528/15, Al Chodor, ECLI:EU:C:2017:213, published in the electronic Reports of the cases, parr. 36-37. 14 March 2017, C-157/15, Achbita, ECLI:EU:C:2017:203,

has confirmed and specified the freedom contained in Art. 2 TEU. The jurisprudence consolidates and defines the freedom of expression, according to Art. 11 CFREU. It also connects this freedom with that of democracy.[32]

(Follows): DEMOCRACY

The judgments of Roquette Frères and Maizena in 1980 tried to define democracy as the fundamental principle of an institutional balance of the Union that guarantees the role of the European Parliament and describes the law through the representative assembly[33] and the elections.

published in the electronic Reports of the cases, parr. 22-28.

[32]CJEU, 21 December 2016, joined cases C-203/15 and C-968/15, Tele2 Sverige, ECLI:EU:C:2016:970, par. 93. 6 September 2011, C-163/10, Patriciello, ECLI:EU:C:2016:543, published in the electronic Reports of the cases, par. 31. 6 October 2020, C-623/17, Privacy International, ECLI:EU:C:2020:790,k published in the electronic Reports of the cases, par. 62. 4 October 2024, C-633/22, Real Madrid Club de Fútbol, ECLI:EU:C:2024:843, published in the electronic Reports of the cases, par. 49.

[33]CJEU, 29 October 1980, 138/79, Roquette Frères, ECLI:EU:C:1980:249, I-03333, par. 33. 29 October 1980, 139/79, Maizena, ECLI:EU:C:1980:250, I-03393, par. 34. 11 June 1991, C-300/89, Commission v. Council, ECLI:EU:C:1991:244, I-02867, par. 20. 10 June 1997, C-392/95, Parliament v.

The principle of democracy is part of the order of the Union, a factor that accelerates the development of the integration process. The representative meaning is an exception that was inserted by Art. 6 TEU. It is noted through the treaties of Amsterdam and Nice among the fundamental principles of the Union.[34]

From a jurisprudential point of view, references to participatory democracy are noted. The CJEU has established that principles such as transparency and access to documents are present in most of the systems of the EU Member States.

The principles of the order of the Union contribute, therefore, to the strengthening of the democratic character of the European institutions.[35]

In the system of the Union, respect for the principle of

Council,ECLI:EU:C:1997:289, I-03213, par. 14.

[34]CJEU, 9 March 2010, C-518/07, Commission v. Germany, ECLI:EU:C:2010:125, I-01885, parr. 38-46.

[35]CJEU, 30 April 1996, C-58/94, Netherlands v. Council, ECLI:EU:C:1996:171, I-02169, parr. 34-35. 6 December 2001, C-353/99, Hautala, ECLI:EU:C:2001:662, I-09565, par. 24. 1st July 2008, joined cases C-39/05 P and C-52/05 P, Sweden and Turco v. Council, ECLI:EU:C:2008:374, I-04723, par. 46.

democracy involves the participation of the European Parliament in relation to the process and the adoption of the relevant act. In other words, it is a citizen participation that guarantees an alternative way for the social parties to sufficient representation.[36]

Art. 10, par. 1 TEU added that citizens are directly represented at the level of the Union by the European Parliament. The Member States, instead, are represented by the Council, the heads of state and by their citizens.

Par. 3 of Art. 10 TEU refers to participatory democracy and establishes that every citizen has the right to participate in the democratic life of the Union as provided by Art. 10, par. 3 TEU.[37]

Art. 11 TEU imposes on the institutions and its citizens and on representative associations their interests and the possibility to know and exchange opinions thus reaffirming

[36]17 June 1998, T-135/96, UEAPME v. Council, ECLI:EU:T:1998:128, I-02335, parr. 89-90. 24 October 2019, T-310/18, EPSU and Goudriaan v. Commission, ECLI:EU:C:2019:757, published in the electronic Reports of the cases, par. 95.

[37]C-418/18 P, Puppinck and others v. Commission of 19 December 2019, ECLI:EU:C:2019:640, published in the electronic Reports of the cases, par. 54.

the obligation of transparency and the actions of the Union as a tool for the European citizens' initiative.[38]

The CJEU limited the value of democracy according to Art. 2 TEU to the representative one. An exchange of views based on the interinstitutional agreement between the European Parliament, the Council of the EU and the Commission[39] as well as paragraph 19 which provides for the European Commission before adopting a proposal to conduct consultations in an open, transparent way with small and medium-sized enterprises.

Since 2019 it has been stated that Art. 10, par. 1 TEU recalls the concept of representative democracy, which constitutes the values present in Art. 2 TEU as well as the instruments of participatory democracy, which are present in the Union treaty in a comprehensive manner promoting thus the participation of participatory democracy in the

[38]Regulation (EU) 2019/788 of the European Parliament and of the Council of 17 April 2019 on the European citizens' initiative (Text with EEA relevance.), PE/92/2018/REV/1, OJ L 130, 17.5.2019, pp. 55-81.

[39]Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making, OJ L 123, 12.5.2016, pp. 1-14.

democratic process of the Union.[40]

The CJEU has linked the value of democracy with the fundamental rights and especially with art. 11 regarding freedom of expression. It excludes, however, other connections with Art. 39 and 40 CFREU, which establish the right to vote and eligibility for elections, respecting the functioning of the European Parliament for all European citizens.[41]

(Follows): THE RULE OF LAW

Democracy as a right is linked to the rule of law.[42] The jurisprudence from 1986 has highlighted, through the

[40]CJEU, C-418/18 P, Puppinck and others v. Commission of 19 December 2019, op. cit., parr. 64-65.

[41]CJEU, 19 November 2024, C-808/21, Commission v. Czech Republic (qualité de membre d'un parti politique), ECLI:EU:C:2024:962, published in the electronic Reports of the cases. 19 November 2024, C-814/21, Commission v. Poland, ECLI:EU:C:2024:963, published in the electronic Reports of the cases.

[42]See also the Communication from the Commission to the European Parliament and the Council, A new EU framework to strengthen the rule of law, of 11 March 2014, COM(2014) 158 final.

control of its acts, the treaties thus defining the organizational model to regulate the exercise of public powers, that guarantees the rights and individual freedoms protected from any arbitrary use and from powers through a series of rules, principles that regulate their action.[43]

The CJEU has not departed from national constitutional traditions (Alvazzi del Frate, Torini, 2021) but has integrated the founding principles of the constitution with the treaties (Konstadinides, 2017) and the notion of the rule of law with a series of procedural principles such as that of legality and effective judicial protection.[44]

European judges have defined the rule of law[45] by directly linking it with the mission and the assurance of respect for the law, the interpretation and application of the treaties

[43]CJEU, C-294/83, Parti écologiste "Les Verts" v. Parliament of 23 April 1986, ECLI:EU:C:1986:166, p. I-01339, par. 23. 13 March 1979, 101/78, Granaria BV, ECLI:EU:C:1979:38, I-00623, par. 5.

[44]CJEU, 25 July 2002, C-50/00, Union de pequeños agricultores v. Council, ECLI:EU:C:2002:462, I-06677, parr. 38-39.

[45] C-72/15, Rosneft of 28 March 2017, ECLI:EU:C:2017:236, published in the electronic Reports of the cases, par. 73. 6 October 2020, C-134/19 P., Bank Refah Kargaran, ECLI:EU:C:2020:793, published in the electronic Reports of the cases.

enshrined in Art. 19, par. 1, lett. 1 TEU together with Art. 47 CFREU (Editorial comments, 2007; Ripol Carulla, Ligartemendia Uceizabarrena, 2022; Casarosa, Moraru, 2022). In such a way, the judges have placed the rule of law in a substantial dimension that considers the full adherence of a normative activity with fundamental rights (Pech, 2010; Liakopoulos, 2022).

It was already the European Commission from 2014 that brought together the principles and rights concerning the rule of law with the CJEU, that is, within a non-exhaustive list including the principles of legality, legal of fundamental rights as well as the separation of powers intended by judges of the executive power.[46]

[46]The list has been included in Annex 1 of the Communication from the Commission, A new EU framework to strengthen the rule of law, cit. In this Annex, the Commission has indicated, for each principle, the main reference judgments. This list is not too dissimilar from the one drawn up by the Venice Commission (advisory body of the Council of Europe on constitutional matters) in the document entitled Rule of Law Checklist, of 18 March 2016, n. 711/2013, the list of which includes: the principle of legality; legal certainty; the prohibition of arbitrariness and abuse of power; access to justice; the principles of equality before the law and non-discrimination.

The CJEU has relied individually on some of these[47] and above all on the list. The principles developed in such a list are connected with the value of the rule of law the certainty, prohibition of arbitrariness of the executive power, independent and effective judicial control concerning the respect of the law as part of Art. 2 TEU.[48]

WHAT IS THE NATURE OF THE UNION VALUES?

The values indicate an ethical basis based on the EU (Roland, 2007). They can be part of the form of principles with the task of translating the choices of a system of legal norms.

The tendency to superimpose values and principles

[47]CJEU, 11 March 2023, C-817/21, Inspecţia Judiciară, ECLI:EU:C:2023:391, published in the electronic Reports of the cases, parr. 39-41. 5 November 2019, C-192/18, Commission v. Poland, ECLI:EU:C:2019:924, published in the electronic Reports of the cases. par. 106. 24 July 2023, C-107/23 PPU, Lin, ECLI:EU:C:2023:606, published in the electronic Reports of the cases, par. 114.

[48]Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, OJ L 433I, 22.12.2020, pp. 1-10.

eliminates the differences and often identifies these values (Spieker, 2023). This is a tendency that is based on the law of the Union (Pech, 2009; Kochenov, 2017; Hainthaler, 2024).

Through the Treaty of Lisbon, the values are used interchangeably. More precisely, are defined in Art. 3, par. 5 TEU as well as in the list of objectives of the Union. Instead, in Art. 21, par. 1 TEU it is specified that these objectives affirm the foundation of the Union which promotes the principles of its creation. Also the CFREU and the fundamental rights use two terms in their preamble defining human dignity, solidarity equality together with democracy and the rule of rights as principles (Streinz, 2018).

The legal value of these principles together with Art. 6, par. 1 TEU have attributed to the evocative function and to their distinction, assuming a role that strengthens the identity foundation of the legal system of the Union. It is a guide of actions for subjects that recognize themselves in that legal system. It is stated that the values of Art. 2 TEU produce legal effects that bind the institutions and the Member States.

Articles 3, par. 1, 5, 8 and 13 TEU help to promote the values and objectives of the institutions that pursue an internal and external level of their precisely assigned mission (Dony, 2018). Instead, as far as concern the states, the principles confer a binding legal nature of values that compete, according to Art. 7 TEU, with direct procedures sanctioning serious violations.

Art. 49 TEU considers their respect in the case of serious violations and in the process of European integration (Von Bogdandy, Bast, 2009; Lamblin-Gourdin, Mondielli, 2013).

The CJEU has used the terms "principles" and "values" as synonyms on various occasions within its own jurisprudence.[49]

In 2022, the CJEU also stated, in this regard, that:

> "(...) it does not constitute a mere statement of orientations and intentions of a political nature, but contains values that (...) are embodied in principles that entail legally binding obligations for the Member States (...) it contains legal obligations, but it must be added that its formulation and in particular the double reference to

[49]C-216/18 PPU, Minister for Justice and Equality (Deficiencies in the system of justice), ECLI:EU:C:2018:586, published in the electronic Reports of the cases, par. 69.

> the values (...) ultimately recognize essential canons for the legal systems of both (...) giving to this provision some peculiarities. Starting from the scope of their application (...)".[50]

Art. 2 TEU allows states a general duty to maintain the national legal system in accordance with the listed values, within the material scope and competences of the Union. This is a limit of action for states. More precisely, such an article specifies the exercise and competences that fall within the reserved domain of the Union, making the latter a guarantor of values with the obligation to inform national constitutions. The obligations provided for by this type of provision lead Member States to avoid exceptions (Spieker, 2019).

According to art. 2 TEU states avoid behaviors that configure a systemic violation of values and a serious violation that transcends individual violations resulting from a constitutional system. It assumes a relevance that calls into question the ability of national authorities to react and comply with fundamental standards appropriate

[50]CJEU, 5 June 2023, C-204/21, Commission v. Poland (Indépendance et vie privée des juges), ECLI:EU:C.2023:442, published in the electronic Reports of the cases, parr. 66-67.

for the continuous integration process of the Union system (Von Bogdandy, Ioannidis, 2014; Schmidt, Bogdanowicz, 2018; Kochenov, 2024). A type of violation that judges consider dangerous for the functioning and nature of the Union. It has also serious repercussions for the states (Closa, Kochenov, 2016).

The CJEU stated that the law of the Union has allowed a structured network of norms, principles and legal relationships that are interdependent and mutually bind the Union and its members. Such an interdependence allows states to share a series of common values as provided for by Art. 2 TEU, which the Union is founded on and which justifies the existence of mutual trust according to the recognition of values and respect for the law of the Union (Bonichot, Aubert, 2017).[51]

The statements of the CJEU seem to be able to deduce that Art. 2 TEU recalls and sees the provision of a source of obligations *erga omnes* for each Member State, that assumes a collective character towards the Union.

Member States as subjects of the legal system of the Union

[51]C-411/10 and C-493/10, N. S of 21 December 2011, ECLI:EU:C:2011:865, I-13905, par. 83.

as well as individuals who have a common interest that guarantees the respect of national systems and their violation even by a single state threatening the trust and shared nature that makes the legal heritage of the Union indispensable (Baratta, 2016).

Art. 2 TEU is consistent with the ratio of Art. 7 TEU. It is also a means to fill the imbalance that is created despite the rigorous and precise work of the CJEU with the infringement procedure. The situation that is created to the founding values has as a consequence uncertainties regarding the full adhesion of all the Member States to this system (Kochenov, 2017).

Art. 7 TEU has considered the scope of application of Union law to be unconnected to all sectors concerning the activity of the states and above all to the violations that the Treaty defines as persistent and serious.

WHAT IS THE RELATIONSHIP BETWEEN ART. 2 TEU AND THE NATIONAL IDENTITY CLAUSE OF ART. 4, PAR. 2 TEU?

According to Art. 4, par. 2 TEU the Union respects national identity as a clause of fundamental, political, constitutional structure of a system of regional autonomies. These are the fundamental structures that are part of the essential functions of the state such as national citizenship, territory, legal status, religious confessions and associations, national defense and the organization of armed forces, the choice of languages, political choices and fundamental values of the state, education, public health, enrichment of cultural heritage, military service, civil service, etc. (Di Federico, 2019).[52]

The clause and function that brings back the concept of constitutional pluralism (Walker, 2002; Poiares Maduro, 2003; Von Bogdandy, Schill, 2011; Jaklic, 2012), addressed by the CJEU, respects the cultural, historical, social heritage according to national constitutional traditions that avoid

[52]See the conclusions of the Advocate General M. Poiares Maduro presented in case: C-213/07, Michaniki of 16 December 2008, ECLI:EU:C:2008:544, I-09999, par. 31.

disproportionate interference. An approach that considers the clause as a sort of integration process in cases of conflict between Union law and constitutional law (Besselink, 2010).

The national identity clause recognizes the Union the theories of counter-limits that are elaborated by constitutional courts as well as the fundamental constitutional principles (Jacquè, 2016; Halmai, 2018; Blanquet, 2023).

This clause (Ritleng, 2010) prevents and reduces conflicts between Union law and constitutional law by affecting the competences of the Union that concern its exercise. The clause that is part of Art. 4, par. 2 TEU requires the institutions to take into consideration questions of an identity nature, that arise above all from the CJEU, that is, the national identity that evaluates the legitimacy of acts of the Union and its interpretation (Guastaferro, 2012).

It is up to the state to define the components of its national identity and the CJEU remains the sole arbiter of compatibility with Union law and conflict solver (Konstanidines, 2010-2011).

The identity clause does not call on states to withdraw from

what is established by Art. 2 TEU, as a result and limit of respect for the values of the Union (Besselink, 2013; Editorial comment, 2015; Claes, 2019).

National identity is thus opposed to the Union into a measure that is compatible with the identity of the latter. The founding values of European identity constitute the framework within the national identity that is reconstructed.

The CJEU[53] highlights Art. 4, par. 2 TEU. Especially, it explains how it is treated by judges as a limit related to a derogation that manages exclusively and particularly the CJEU.[54]

[53]CJEU, C-208/09, Sayn-Wittgenstein of 22 December 2010, ECLI:EU:C:2010:806, I-13693, parr. 92-93. 16 April 2013, C-202/11, Las, ECLI:EU:C:2013:239, published in the electronic Reports of the cases, parr. 26-27. 21 December 2021, joined cases: C-357/19, C-379/19, C-547/19, C-811/19, C-840/19, Euro Box promotion and others, ECLI:EU:C:2021:1034, published in the electronic Reports of the cases, par. 229. 22 February 2022, C-430/21, R.S. (Effet des arrêts d'une cour constitutionnelle), ECLI:EU:C:2022:99, published in the electronic Reports of the cases, par. 43.

[54]See the conclusions of the Advocate General P. Cruz Villalòn presented in case: C-62/14, Gauweiler of 14 January 2015, ECLI:EU:C:2015:7, published in the electronic Reports of the cases, parr. 59 and 60.

National identity has as its legitimate objective to respect the common order and the components that are intended to fit into the budget line with the recognized rights respecting the principle of proportionality.[55] Identifying the components that the judges have avoided intervening leaves each Member State to decide unilaterally its own national identity by submitting it to its own attention.[56]

The CJEU has confirmed that the protection of national identity does not authorize and subtracts from obligations deriving from Art. 2 TEU. The reference to the rule of law and Art. 4, par. 2 TEU guarantee for the Member States the relative discretion and common values, taking into account the peculiarities of a legal system that does not allow in discretion the content and the values that the order of the

[55]CJEU, C-208/09, Sayn-Wittgenstein of 22 December 2010, op. cit., par. 93. 12 June 2014, C-156/13, Digibet and Albers, ECLI:EU:C:2014:1756, published in the electronic Reports of the cases, par. 39.

[56]CJEU, 16 January 2024, C-33/22, Österreichische Datenschutzbehörde, ECLI:EU:C:2024:46 published in the electronic Reports of the cases, par. 50. see also the conclusions of the Advocate General M. Poiares Maduro presented in case C-53/04, Marrosu and Sardino of 20 September 2005, ECLI:EU:C:2005:569, I-07213. C-180/04, 7 September 2006, Vassallo, ECLI:EU:C:2006:518, I-07251, par. 40.

Union has.

“INTERPRETATION” OF ART. 2 TEU

The considerations and values enshrined in Art. 2 TEU address the problem of excusability, i.e. justiciability that focuses on issues that are interconnected, according to the silence of the treaties and the possibility of resorting to the infringement procedure to monitor compliance with it. This is a positive response that creates a remedy to the control mechanism provided for in the second paragraph of Art. 7 TEU.

Justiciability includes in its framework an interpretative nature that questions Art. 2 TEU in the presence of systemic violations of values by Member States that are committed within the exercise of competences that fall within the reserved domain.

National conduct is configured as a violation of the values of the Union that entail the violation of specific obligations deriving from provisions of the treaties and/or from the CFREU and/or from secondary law (Spieker, 2020).

It is considered that the jurisdictional action, as the object

of violation of specific obligations, is possible if it adds the direct policy that deals with the violation of Art. 2 TEU, that is in accordance with procedures established by Art. 7 TEU.
The actions proceed in a parallel and independent way allowing a form of control over values on the part of the CJEU. Distinguishing between justiciability of values and indirect application of Art. 2 TEU resorts exclusively to other provisions of the treaties.
This happens because the values include the application of Art. 2 TEU considering the productivity of legal obligations in a direct way before the CJEU (Kaiser, 2023). As a solution, we note what is foreseen by the CJEU and by the doctrine that is divided on the matter.

WHAT ARE THE ARGUMENTS THAT DENY THE DIRECT JUSTICIABILITY OF ART. 2 TEU?

It is not always obvious that there are arguments relating to the provision of the abstract and varied nature of obligations imposed on states. These are applied by judges, as for example happens with the infringement procedure. In such a case, it is considered impossible for the CJEU to

scrutinize behaviors (Kochenov, Pech, 2018; Bonelli, 2022) that fall within the internal competence of the states.
The infringement procedure is used only for specific violations according to the law of the Union by first evaluating Art. 2 TEU which guarantees the mechanisms regulated by Art. 7 TEU (Grabit, 2016; Richard, 2021).
The supporters of this position do not actually motivate the procedure which does not conceive the constitutional order of the states since it considers the countries that have asked to be part of the European Union as well as the Member States that respect the values that have set the process of European construction (Editorial comments, 2012).
This infringement procedure according to Art. 2 TEU finds place, as a rhetorical type and interpretative aid, in provisions that are the object of the procedure for the values of the Union and as a limit that invokes the provisions of the law of the Union.
Another argument, that is part of the Treaty on the functioning of values, concerns Art. 269 which seeks to limit the ability of the CJEU as well as to intervene and adopt, according to Art. 7 TEU, procedural aspects. This is

an argument that, according to Art. 269 TFEU, the CJEU does not control adopted acts. Art. 7 TEU precludes the possibility of operating any type of control through alternative channels, i.e. of the infringement procedure.
Art. 269 TFEU also constitutes evidence relating to the *lex specialis* nature of Art. 7 TEU and of the will of the drafters of the treaties in order to entrust the task of control and compliance with the values provided for by Art. 2 TEU exclusively to the policies of the Union (Lenaerts, 2015; Richard, 2021).

ARE THERE ANY ARGUMENTS IN FAVOR?

In the case of systemic violations of European values, Member States invoke Art. 2 TEU directly before the judges of the Union. This mechanism provides, according to Art. 7 TEU, an opportunity that is added to the control of the CJEU so as not to replace it.
Therefore, according to Art. 258 TFEU, the infringement procedure is initiated. The European Commission resorts to the systemic procedure whenever it considers that a Member State has committed a series of specific violations

of Union law (Scheppele, 2013; Scheppele, 2016; Scheppele, Kochenov, Grabowska-Moroz, 2020). Positions that highlight the existence of a persistent state practice consistent with the systemic violation, different from the sum of the specific ones that touch the fundamental obligations of the Union.

The CJEU has ruled on individual violations of a systemic nature, thus extending its power of control based on Art. 2 TEU. The direct justiciability of Art. 2 TEU focuses on a series of arguments of a general nature. From a logical point of view, it is expected that the violation of Art. 2 TEU is sanctioned exclusively and effectively under Art. 7 TEU, making the protection of the values of the Union less efficient than any other provision of the constituting treaties. Respect for the political nature of the jurisdictional remedies of the assessments adhering to the factual circumstances is based on the principle of proportionality.

In the pre-litigation phase, the infringement procedure is suitable for addressing systemic deficiencies of the values, given that the assignment to the European Commission of the related task of dialogue with a Member State leads to a

specific path that is not oriented towards isolation and limitations but rather towards its rectification. This considers that the very nature of Art. 2 TEU, as a legal norm, allows for the translation of its content as well as the subjective positions, obligations, rights, faculties that make this provision justiciable.

The mechanisms of political control are based on Art. 7 TEU. They are designed to control violations of the principles of freedom, democracy, respect for human rights, etc. They are also based on Art. 6, par. 1 TEU since Art. 46 TEU is limited to the competences of the CJEU, that explicitly exclude judicial control.

Art. 2 TEU falls within the provisions that the CJEU exercises general competence. According to Art. 19, par. 1, letter 1 TEU the CJEU ensures the respect of rights and the interpretation and application of the treaties. Before the Treaty of Lisbon, Art. 266 TEU regulated the infringement procedure. It provided for the European Commission to initiate the procedure.

Art. 258 TFEU established the procedure addressed to each Member State that has no obligations incumbent on it by virtue of its own treaties. The consolidated tendency of the

CJEU to read what is established in Art. 19, par. 1, lett. 1 TEU highlights restrictive jurisdictional competences. (Schermers, Waelbroeck, 2001). This disproves the argument that Art. 269 TFEU creates an obstacle to the recognition of the direct justiciability of Art. 2 TEU.

This provision does not provide for limits to the competence of the CJEU in relation to acts based on Art. 7 TEU. Furthermore, it represents an exception to what is established by Art. 19, par. 1, lett. 1) TEU. It is interpreted restrictively by extending the scope beyond that indicated and invoking to prevent the CJEU from controlling compliance with its own values provided for by Art. 2 TEU through different procedures according to Art. 7 TEU (Von Bogdandy, 2019).[57]

According to Art. 2 TEU, the values are based on general principles of jurisprudential origin. Thus, the use of the infringement procedure as a means of control that respects Art. 2 TEU also has the same origin. In this way, the

[57]See the conclusions of the Advocate General M. Bobek presented in 3 December 2020 in case C-650/18, Hungary v. Parliament, ECLI:EU:C:2020:985, published in the electronic Reports of the cases, par. 44.

impossibility of using the procedure to violate the systemic and non-precise nature of behaviors, that are required of states outside the scope of application of treaties, can be considered overcomed.

The CJEU has recognized the infringement procedure within the scope of application that goes beyond the precise violation of obligations that derive from the law of the Union.

The treaties do not prevent a complex examination of the relevant number of situations that the European Commission sees the existence of a repeated failure to comply with the member state under examination,[58] thus opening the possibility of starting general and persistent infringement procedures, i.e. infringements that due to their size and duration require a general political and administrative review for the state in question.[59]

The infringements are also accompanied by systemic

[58]CJEU, 26 April 2005, C-494/01, Commission v. Ireland, ECLI:EU:C:2005:250, I-03331, parr. 27-28. 26 April 2007, C-135/05, Commission v. Italy, ECLI:EU:C:2007:250, I-03475, par. 20.

[59]See the conclusions of the Advocate General L. A. Geelhoed presented in 23 September 2004, in case C-494/01, Commission v. Ireland, ECLI:EU:C:2004:546, I-03331, parr. 43-48.

violations of the values (Lenaerts, Gutman, Nowak, 2023). The CJEU has also referred to systemic and general deficiencies in a judicial system of a Member State which justify the refusal of another Member State to execute a European arrest warrant (Leloup, 2023). The recognition of systemic and value-based violations is provided for by Art. 2 TEU as a type of violation of Union law, which is directly sanctioned by the CJEU.

In reality, the CJEU has extended the boundaries of its control over compliance with Union law outside the matters and sectors established by the Treaties, thus operating a process of non-collaboration with the competences of the Union (Boucon, 2014).

The jurisprudence has operated within sectors that have remained within the competence that respects the obligations deriving from its membership with the Union (Schwarze, 2013).[60]

[60]CJEU, 10 April 2019, joined cases: C-202/18 and C-238/18, Rimšēvičs and BCE v. Latvia, ECLI:EU:C:2019:299, published in the electronic Reports of the cases, par. 57. 14 February 1995, C-279/93, Finanzamt Köln-Altstadt v. Schumacker, ECLI:EU:C:1995:31, I-00225, par. 12. 2 March 2010, C-135/08, Rottmann, ECLI:EU:C:2010:104, I-01449

These obligations derive from the fundamental provisions of the common legal system[61] constituting thus a nucleus of European integration that subjects a process of budgeting for the interests that the states protect in the areas that retain of their own competence (Azoulai, 2011).

A budget that underlines that the CJEU strategy has asked the states to adjust the national systems and take into account the needs of Union law, thus considering the an expansion for the CJEU and the vision of the relative behaviour that the states take into consideration as members of the Union, justifying thus the common interest that preserves the effectiveness of the integration process.

It is also legitimate and valid for Art. 2 TEU the objective that makes the national legal system available to the original notions of the Member States. The CJEU has defined its relationship with Art. 2 TEU and the national identity clause, according to Art. 4, par. 2 TEU, establishing that the states retain the right to protect the peculiarities

[61]CJEU, 11 March 2004, C-9/02, De Lasteyrie Du Saillant, ECLI:EU:C:2004:138, I-02409, par. 40. see also the conclusions of the Advocate General M. Poiares Maduro presented in 7 April 2005 in case: C-446/03, Marks & Spencer, ECLI:EU:C:2005:201, I-10837, parr. 21-22.

of a legal and constitutional system, affecting thus the content of the values of the Union in its legal system.

CONTROL TOOL OF ART. 2 TEU THROUGH PRELIMINARY REFERENCE

For the control of Art. 2 TEU, through preliminary reference, two paths are followed. In the first path we have the provision that produces legal obligations. In this case it is possible for a national judge to ask preliminary questions to the CJEU in situations within the scope of application of the law of the Union. The second path excludes that the national judge questions the CJEU on Art. 2 TEU, as a disapplication of provisions of national law that is contrary to its values. This position also includes the vagueness of the precepts that are contained in the article in question lacking the necessary requirements of clarity.

The CJEU with regard to preliminary references and according to Art. 2 TEU has placed side by side the provisions of the Union treaty.

Within this context, fundamental rights and systemic violations that have a certain basis are considered (Von

Bogdandy, Kottmann, Antpöler, Dichschen, Hentrei, Smrkolj, 2012; Von Bogdandy, Antpöler, Dichschen, Hentrei, Smrkolj, 2015). They also take human rights into account (Van Den Brink, 2019).

Member States outside the competences conferred on them by the European Union are autonomous in the protection of fundamental rights. They guarantee and define the essence of the rights enshrined in Art. 2 TEU, which apply public authority to the entire European legal space.

When a state violates this essence it also undermines the foundations of European integration without reacting with an adequate response from the national system. Such a presumption becomes fully justifiable with the safety net given in the law of the Union as a guarantee to citizens. It asserts their rights under Art. 2 TEU before the national judge calling into question the CJEU with a preliminary reference for the interpretation of this article.

ART. 2 TEU AND APPLICATION OF ART. 19, PAR. 1, LETT. 2 TEU FOR THE PROTECTION OF THE RULE OF LAW

Since 2018 the CJEU has started to consider and speak for the rule of law in various situations at a Union level and in some Member States. The common values that were established in the case of Hungary as well as the constitutional changes that were made in this country in 2011 were immediately verified (Jakab, Bodnàr, 2021).

The constitutional change in Hungary was promulgated in 2011 and came into force on 1 January 2012. This is an amendment that included cardinal laws that are intended to regulate a series of topics that require the qualified majority of two thirds. They are approved and placed at a higher hierarchical level than ordinary laws.

Between 2011 and 2013 a series of cardinal laws were enacted that contributed to the constitutional structure of the country.

The provisions with the new promulgation include among others: weakening the weight of the judiciary; the electoral system favoring the largest parties that have compressed fundamental rights and that concerns freedom of

expression; media pluralism; social rights and; rights of minorities. The situation has been deteriorated due to political intervention and by independent bodies that have questioned the separation of related powers.

The European Commission has adopted a cautious approach involving the CJEU in two infringement procedures challenging the country exclusively for the violation of provisions of secondary law of the Union (Belavusau, 2013). Since 2012 the European Commission has brought to Hungary and before the CJEU some provisions that contained the cardinal laws.

The European Commission challenged the relevant provisions that reduced the retirement age of judges, prosecutors and notaries to the age of 62 and not to 70 as it was until then. Thus, a large number of system operators had to leave the Hungarian judicial system. These are provisions relating to basic and age unequal treatment that establish a general framework for equal treatment in terms of working conditions and employment.

The European Commission has, therefore, requested the relevant urgent procedure from the CJEU out of concern for the situation in Hungary.

In the second complaint the European Commission had to do with personal data and with the creation of a data protection agency, which was foreseen according to the provisions of the Directive 95/46/EC[62] regarding the protection of natural persons and the processing of personal data as well as the free movement of such data.
The European Commission has also started a third infringement procedure regarding the new regulation with the Hungarian central bank which came to a dispute when the institution considered the proposed amendments to the text, that were promised by the government, as sufficient.
This approach indirectly protects the values within the scope of the infringement procedure at the time of a substantial unpreparedness of the institutions to deal with issues such as Hungary, thus demonstrating their limits.
The European Commission has shown its positions regarding the case of Hungary[63] and the government's

[62]Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 23.11.1995, pp. 31-50.

[63]CJEU, 8 April 2014, C-288/12, Commission v. Hungary, ECLI:EU:C:2014:237, published in the electronic Reports of the cases.

actions to enforce the sentences that did not have an impact on underlying problems and that did not mitigate negative effects that had to do with the constitutional reform of 2011.

The lack of respect for values has shown the deterioration of the rule of law as it was also happened in Poland (Bàrd, Sledzinska-Simon, 2020). This situation has pushed the European Commission to monitor national issues and to create new ways of intervention[64] thus resorting to jurisdictional control tools and welcoming stimuli that come from different observers (Von Danwitz, 2017).

European judges and their incompatibility with the principle of infringement provides for reduction measures for different categories of public employment as it was happened in Portugal. The case did not concern delicate situations deriving from the independence of the judiciary that provides the CJEU with the necessary peace of mind, that is, to develop an approach to the values of the Union

[64]Communication on European Union law: better results through better application, of 19 January 2017, doc. 2017/C/18/02, in OJEU C 18 of 19 January 2020, pp. 10-20. Communication to the European Parliament and the Council of 11 March 2014, COM(2014) 158 final.

that directly call for Art. 2 TEU.

In the ASJP case of 2018[65] the CJEU has consistently and repeatedly formulated under Art. 29, par. 2, letter 2 TEU the competence to monitor compliance with the values, that concern the organization of Member States' judicial systems. This is an innovative reasoning since the CJEU has stated, that according to Art. 2 TEU, the Union is based on values and on the rule of law.

The CJEU, moreover, in cooperation with Art. 19, par. 1, letter e) TEU provides for the states the necessary remedies that guarantee individuals the right to effective judicial protection for the regulated sectors of the Union (Pech, Platon, 2018).

The connection of the provisions for the CJEU necessarily recalls Art. 19 TEU, as an expression of the role that the Union entrusts to national jurisdictions in a manner consistent with the principle of loyal cooperation contributing to ensure the application of the legal order of the treaties.[66]

[65]C-64/16, Associação Sindical dos Juízes Portugueses of 27 February 2018, ECLI:EU:C:2018:117, published in the electronic Reports of the cases.

[66]Opinion 1/09 (Unified Patent Litigation System) of 8 March 2011,

In order to make the jurisdictions structurally national and in a European context functional (Magaldi, 2022), each Member State is required to guarantee its judges and the procedures to meet the requirements for effective judicial protection that establishes European law. In this context, the independence of judges assumes primary importance.
The rule of law in Poland has prompted the CJEU to clarify the scope of the obligation arised from Art. 19, par. 1, lett. 2 TEU as well as its relationship with Art. 2 TEU. The relevant case law challenging Polish laws as well as reforms in the areas of the judiciary[67] by prompting the CJEU to clarify the established obligation. Since the ruling of the ASJP, the interpretation of Union law has been applied to national jurisdictions. Thus, the CJEU binds the states and exercises the competences that remain in its reserved domain, such as the proper functioning, organization and national justice. These are aspects that guarantee the protection of

ECLI:EU:C:2011:137, I-01137. C-459/03, European Commission v. Republic of Ireland of 30 May 2006, ECLI:EU:C:2006:345, I-04635, parr. 66-68.

[67]CJEU, 24 June 2019, C-619/18, Commission v. Poland (Independence of the Supreme Court) ECLI:EU:C:2019:615, published in the electronic Reports of the cases.

individual rights arising from the Union legal system and the safeguarding of common values for the rule of law.
The CJEU is thus tasked with monitoring whether states guarantee the effective independence of judicial systems according to standards defined and applied rigorously. Monitoring independence from the Polish Supreme Court is linked to the principle of irremovability of judges. The Court also assesses the justification of legitimate and compelling objectives, the proportionality of these objectives as well as the guarantee and appearance of judicial independence in the eyes of individuals.
The Court's choice to use Art. 19, par. 1, lett. 2) TEU as a parameter of legitimacy for national provisions is distinguished from Art. 47 CFREU (Ripol Carulla, Ligartemendia Uceizabarrena, 2022; Casarosa, Moraru, 2022), which establishes the right to an effective remedy and to an impartial judge, who is supported (Krajewsky, Ziolòwski, 2020).[68] The CJEU, thus, distinguishes the scope

[68]CJEU, 16 June 2017, C-685/15, Online Games and others, ECLI:EU:C:2017:452, published in the electronic Reports of the cases, par. 54. 29 July 2019, C-680/17, Sumanan Vethanayagam, ECLI:EU:C:2019:627, published in the electronic Reports of the cases, par. 80.

and the provision of the treaty in the CFREU. The limit provided for by art. 51 establishes the fundamental rights that are foreseen and respected by the Member States for the implementation of Union law.
The separation of the provisions is essential for Art. 19, par. 1, lett. 2 TEU, i.e. for the states to contribute in a correct and uniform manner to the application of Union law. The connection with Art. 2 TEU provides Art. 19, par. 1, letter. 2 TEU with substantial content, within the scope of amplified application.
The obligation for states to respect the principle of effective judicial protection means the application of the value of the rule of law.
The operation of the national judicial system and its capacity guarantees effective judicial protection when faced with a systemic threat capable of undermining the integration process and legitimizing for the CJEU national activities within the scope of operation of Union law and within the power of review.
The judges have resorted between the scope of competences that are defined by the Treaties and the scope of the law of the Union connected with Art. 19, par. 1, lett.

27 TEU. The CFREU has played an important role to the obligation provided for by Art. 19, par. 1, lett. 2 TTEU,[69] as an interpretation in terms of independence and impartiality of the judiciary (Garcìa-Valdecasas Dorrego, 2019).

The different scopes of application recognize the provisions that involve the distinction of the respective functions, according to Art. 19, par. 1, lett. 2 TEU, which uses actions against systemic violations for the standards that states guarantee in their internal jurisdictional systems. Instead, Art. 47 CFREU (Ripol Carulla, Ligartemendia Uceizabarrena, 2022; Casarosa, Moraru, 2022) remains the guardian for violations of individual rights that fall within the scope of Union law (Leloup, 2020).

Art. 2 and 19, par. 1, lett. 2 TEU consolidate the various judgments that correctly consider the crisis of the rule of law in serious situations. Judgments that thus enlarge

[69]CJEU, 16 May 2017, C-682/15, Berlioz Investment Found, ECLI:EU:C:2017:373, published in the electronic Reports of the cases, par. 44. 20 April 2021, C-896/19, Repubblika, ECLI:EU:C:2021:311, published in the electronic Reports of the cases. Par. 45.

justice in Poland.[70] The majority of them are based on judicial reform and measures to fight corruption as in the case of Romania before and after its entry into the European Union.[71]

THE VALUE OF DEMOCRACY AND APPLICATION OF ART. 2 TEU THROUGH ART. 10, PAR. 1 TEU

In 2019 the CJEU took a position of putting together Art. 2 TEU and Art. 10, par. 1 TEU for the functioning of the Union, which is based on representative democracy. In doing so, it highlighted the value of democracy according to the principles of Art. 2 TEU.[72]

[70]CJEU, 2 March 2021, C-824/18, A.B. and others (Nomination des juges à la Cour suprême-Recours), ECLI:EU:C:2021:153, published in the electronic Reports of the cases, parr. 108-112. 16 November 2021, joined cases C-748/19 to C-754/19, Prokuratura Rejonowa, ECLI:EU:C:2021:931, published in the electronic Reports of the cases, parr. 59-63.

[71]CJEU, 18 May 2021, joined cases: C-83/19, C-127/19, C-195/19, C-291/19, C-355/19, C-397/19, Asociaţia "forumul judecătorilor din românia" and others, ECLI:EU:C:2021:254, published in the electronic Reports of the cases, parr. 188-193.

[72]CJEU, 19 December 2019, C-502/19, Junqueras Vies, ECLI:EU:C:2019:1015, published in the electronic Reports of the cases, par. 62. 23 April 2018, T-561/14, One of Us and others v. Commission, ECLI:EU:C:2018:210,

The ASJP case has been repeated in various judgments,[73] despite the rulings arranged from Artt. 2 and 10, par. 1 TEU (Verellen, 2022; Sonnevend, 2023). Such rulings have evoked situations relating to the functioning of the institutions of the Union. They have also used the interpretation of the provisions for the treaties and secondary law as well as have defined the context of the provisions which are called to operate.

Even partial interpretation of these provisions, unlike Art. 19, par. 1, lett. 27 TEU, is addressed directly to the Member States, which according to art. 10, par. 2 TEU, explicitly refer only to the Union.

It does not exclude that the CJEU decides and uses provisions in situations of deterioration of the value of democracy in EU states (Feisel, 2023).

These provisions come to the conclusion that the democratic foundation of the Union is based on pillars that

ECLI:EU:T:2018:210, published in the electronic Reports of the cases.

[73]CJEU, 24 May 2022, C-629/21 P (R), Puidgemont i Casamajo and others v. Parliament and Spain, ECLI:EU:C:2022:413, published in the electronic Reports of the cases, par. 250. 4 July 2022, C-207/21 P, Commission v. Poland (Protocol n. 36), ECLI:EU:C:2022:560, published in the electronic Reports of the cases, par. 81.

directly substantiate the European Parliament and the participation of governments in the Council.
The court shares the democratic legitimacy for the governments of the Member States through the correct functioning of the national pillar of the democratic legitimacy of the Union.
This is a prerequisite that protects the process of European construction that falls within the scope of operation of the law of the Union. It feels legitimate and extends the jurisprudence through the ASJP case. The principle of democracy also considers Art. 10 TEU which is based on the value provided by Art. 2 TEU. It is a source of obligation for Member States that respect the organisation of the constitutional system (Cotter, 2020).
The judges of Kirchenberg in the cases of Poland and Hungary affirmed the values of Art. 2 TEU that define the identity of the Union in the common legal order based on principles that entail obligations for the Member States.
The provisions of the Treaty confer to the institutions the necessary powers to examine, sanction the violations of Art. 2 TEU by the Member States. The value of democracy in the Poland case is present for a further affirmation and

on the occasion that recalls the thesis of the foundation of the democratic legitimacy of the Union.
Art. 16, par. 4 TEU establishes the relative connection with the constitutional value of the double majority provided for by the Treaty thus representing not only the Member States but also the citizens of the Member States, who through their representatives in the national parliaments designate and legitimize decisions in that institution (Taborowski, Filipek, 2023).
The European Commission provides for the obligation for Member States to grant rights and vote as well as eligibility for municipal elections and for the European Parliament to all European citizens exclusively on the basis of the criterion of residence.
The CJEU has used Art. 10, par. 1, TEU and Art. 2 TEU not in the same way as in the past. In fact, it has recalled the value of democracy, providing and defining the context that places Art. 22 TEU in a way to create a direct link between the value of participatory democracy and the right to vote in municipal elections and in the European Parliament.
The CJEU has also referred to the European Court of Human Rights (ECtHR) underlining the importance of the right to

freedom of association in the political field, as a foundation of a democratic society that establishes Art. 22 TFEU. It is interpreted as a source of a right that effectively exercises to all European citizens the possibility of participating in their own party under the same conditions for each Member State.

The considerations of the CJEU have become the basis for a partial application of Art. 2 TEU, which responds to the arguments of the two countries and to the prohibition of non-national citizens to participate in political parties as an expression of a national identity, which falls within the scope of Art. 4, par. 2 TEU.

The CJEU has used the connection of Art. 2 and 10 TEU with Art. 22 TFEU thus strengthening the ability to resist the claims of its Member States. It connects Art. 22 TFEU to the value of democracy which recalls the jurisprudence enjoyed by the Member States. According to Art. 4, par. 2 TEU it is not disregarded the respect for the values of the Union, that is, to consider in the name of the protection of national identity the obligation of states to guarantee to non-citizens the effective exercise of the right to vote established according to Art. 22 TEU.

The CJEU had the opportunity to conclude a path of application of these effects according to Art. 2 TEU and Art. 10, par. 1 TEU. It reaches the contentious phase of an infringement procedure for the European Commission in June 2023 against Poland for the related Tusk law. A commission of inquiry was created to investigate Russian influences in Poland between 2007 and 2022. A procedure that for the European Commission challenges Poland's principle of democracy also explicitly indicating art., 2 and 10 TEU (Sadurski, 2023).[74]

The European Commission brought before the CJEU the relevant ASJP jurisprudence in order to operate a jurisdictional control and behavior for the Member States regarding the value of democracy (Vissers, 2023).

THE PRINCIPLE OF NON-REGRESSION AND ART. 2 TEU

Some Member States were attentive to the institutions regarding the preliminary reference, that was made by a civil court in Malta concerning the conformity with the

[74]See: Infringement procedure INFR(2023)2088 and the relevant press release of 8 June 2023, IP/23/3134.

rules of the treaty and the principle of effective judicial protection, as a provision of the Maltese constitution in relation to the judiciary. Rules that confer on the prime minister a decisive power in a process of appointment of judges. A power that according to the constitutional reform after 2016 was in agreement with the provision and consultation of a special committee of a non-binding nature.

The referring court raised the issue of the amendment of the Maltese constitution of 2016 in the requirements of Art. 19, par. 1, lett. 2) TEU for the improvement of the procedure regarding its appointment. This is a consideration that the court used to arrive at a new instrument of control that respects the rule of law.

The doubts of the Maltese court begin with the provisions of an appointment procedure for judges that were in force at the time of Malta's entry into the Union. They were screened according to the conditions of accession established by Art. 49, par. 1 TEU, which respects the promotion of the values enshrined in Art. 2 TEU. For the CJEU, respect for values is an indispensable condition for Member States that continue to enjoy the rights that derive

from the application of the founding treaties (Pech, Scheppele, 2017; Kochenov, Dimitrovs, 2021).

The principle of non-regression was the subject of assessment by the Court after the reform of the Maltese constitution of 2016 and the related introduction of the committee at the time that Malta in the EU has deepened its analysis according to the value of the rule of law (Lazowski, 2022).[75] The court concluded the constitutional amendments that are introduced from 2016 in order to limit the powers of the Prime Minister.

The principle of non-regression (Leloup, Kochenov, Dimistrovs, 2021; Scholtes, 2023) took into account the principle of the right of the Union (Gaudin, 2023), which guarantees the Court an effective tool, as a measure and respect for the rule of law on the part of the Member States (Borger, 2022) prohibiting thus its deterioration with expressions that imposed the direction and legislative development of a constitutional, national nature (Mader, 2022).

[75]CJEU, 29 March 2022, C-132/20, Getin Noble Bank, ECLI:EU:C:2022:366, published in the electronic Reports of the cases, par. 104.

After the Repubblika case, the principle of non-regression has been used in jurisprudence many times in relation to the rule of law. It has been considered as a principle of general scope (Leloup, Kochenov, Dimistrovs, 2021; Mader, 2022; Borger, 2022). It is thus the main justification for the obligation for Member States to respect Art. 2 TEU, i.e. to enjoy rights deriving from the application of the treaties, thus considering the applicability of the values established by this type of provision.

The reference to the prohibition of regulatory changes determines the regression referred to changes in a national constitutional system and limits the scope of applicability of the principle in question to the systemic crises of the values of the Union. The connection of the principle of non-regression with Art. 49 TEU assumes an important and central role. As a predominant and exclusive role according to Art. 49TTEU it refers to the temporal accession. Also according to Art., 2 TEU is the only foundation of the prohibition of regression.

This is an orientation that hypothesizes the evolution of this principle towards a different version according to which the constitutional framework of each Member State

falls below the minimum standards of protection of equal and individual values in the CJEU. These values are based on the principles of identity of the EU. The judges are not explicitly decided on an evolution that is unlikely but not impossible (Kadlec, Kosar, 2022).

CONCLUSIONS

From the previous paragraphs we have understood that the doctrine is divided and oriented on various variegated aspects. However, the CJEU has started a direct path towards the recognition of a power of control based on Art. 2 TEU, that is, on the production of direct legal obligations.

This is a path that highlights the creativity with which European judges develop solutions that allow to act in front of serious and sensitive violations concerning values.

The CJEU has limited itself to reacting to critical situations by addressing them with existing instruments and avoiding any assertion of the power of control before the rule of law after the application of Art. 2 TEU.

Only indirectly and with the help and connection of other articles of the Treaty, such as Art. 19, par. 1, lett. 2) TEU and

Art. 49 TEU it was extended the scope of operation of Union law by creating new standards for the control of activities of Member States, as a complex and often uncertain *modus operandi*. This is a direct step that extends the relevant jurisprudence to the rule of law and to other values including democracy and the application of Art. 2 TEU through Art. 10, par. 1 TEU.

In this way, different orientations are created between values that become parameters for controlling the behavior of national authorities, also risking remaining in a difficult situation that undermines the recognition of Art. 2 TEU as an effective instrument for the defense of the constitutional identity of the Union.

The post-Lisbon jurisprudence shows steps forward and backward according to each case since there is no precise notion of the connection between values and national identity used in Art. 2 TEU.

This is a derogatory function of traditional techniques that are used by the CJEU. Techniques that settle disputes and conflicts between economic freedoms and specific national, cultural, linguistic practice within the scope of the internal market. The CJEU thus shows its willingness to examine the

validity of the law, through Art. 2TEU, as a rule that is not yet sufficient to enhance and establish presuppositions that determine the common provisions, i.e. objectives of the Union, principles of attribution, subsidiarity, proportionality that explicitly find a precise application.
The infringement procedure of 2021, i.e. of the European Commission against Hungary on the related charges and violation of the values of equality for the protection of fundamental rights for the anti-LGBTQ+ law, was limited to prohibiting minors under 18 years of age from accessing content on divergence between identity and sex assigned at birth, gender reassignment and homosexuality.[76]
Since December 2022 the procedure towards the appeal for non-compliance against Hungary, the related anti-LGBTQ+ law, operates towards a discrimination that manifests people to a sexual orientation violating a series of provisions of the law of the Union. Several articles of the CFREU concern the European Commission as a systemic nature of the violations that are operated from the law of

[76]Press release July 15, 2021 Brussels: EU founding values: Commission starts legal action against Hungary and Poland for violations of fundamental rights of LGBTIQ people.

Hungary, thus, determining the violation of Art. 2 TEU (Kaiser, Knecht, Spieker, 2024).[77]

The CJEU considers in a direct way the control of the respect of the Euroepan values, according to Art. 2 TEU (Bonelli, Claes, 2023).

Sixteen Member States and a series of organizations of a civil society intervened in the relative procedure of infringement, as support to the Commission that dedicates in a precise and delicate way the sentence many months later underlining that the court continue its completion, according to the application process of Art. 2 TEU. It operates in a definitive and extensive way within the scope of operation of the law of the Union and to the competence of every national behavior related to such values. It will always be the jurisprudence to foresee a minimum thresholds of seriousness of values' violation as well as limits of a quantitative, qualitative nature with other types that condition their application. These are important aspects that are addressed and are destined towards a significant impact to an easy frequency and to an extensive

[77]CJEU, C-769/22, Commission v. Hungary presented in 31 Kanuary 2025, not yet decided.

interpretation of Art. 2 TEU for the near future.

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